IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.132 OF 2006

Tukaram Bali Kamble .. Petitioner

Versus

The Returning Officer & Ors. .. Respondents

Mr.P.D.Dalvi for petitioner

Mr.T.D.Deshmukh for respondent No.1

Mr.A.H.Palekar, A.G.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 20th January 2006.

P.C.

. Heard Mr.Dalvi for petitioner. First respondent, Returning Officer, is represented.

Learned Advocate for first respondent waives service.

2. This petition under Article 227 of the Constitution of India challenges the order passed by the appellate authority viz., Dy.Registrar, Cooperative Societies, Hatkanangale, Dist.Kolhapur, rejecting petitioner's appeal under section 152-A of the Maharashtra Cooperative Societies Act, 1960.

3. The elections to the Board of Direcors of Yashwant Audyogik Sahakari Vasahat were declared vide election programme which is annexed as Annexure A. The date of presentation of nomination papers in the same was notified from 17th December 2005 to 2nd January 2006. The date for scrutiny was notified as 3rd January 2006. Date of publication of the list of valid nomination is notified as 4th January 2006. The date of withdrawal is notified from 5th January

2006 to 19th January 2006 and today i.e. 20th January 2006 is the date notified for publication of a final list of the contesting candidates and allotment of symbols to them. The date of polling is 31st January 2006.

4. Contention of Mr.Dalvi appearing for petitioner is that petitioner's nomination papers could not have been rejected because on the date of scrutiny thereof, the objection taken by 3rd respondent about petitioner being a defaulter of a sugar factory did not survive. He submits that assuming without admitting that there were some dues which were payable to this sugar factory on the date of scrutiny, after objection being raised, petitioner produced not only the receipt of payment of the amount claimed by that sugar factory but a certificate evidencing that there are no dues outstanding by petitioner also came to be produced. Both are dated 2nd January 2006. However, the complainant produced a certificate

from the sugar factory purportedly issued on 2nd January 2006, stating therein that the petitioner has not paid the amount towards service rendered by the sugar factory. In the submission of Mr.Dalvi from a bare perusal of this letter it is apparent that the date mentioned on the same has been altered from 2nd January 2005 to 2nd January 2006 and the objection, therefore, was totally malafide and mischievous. That apart, he submits that before the appellate authority, the original receipt and certificate of the Karkhana in favour of petitioner was produced and thus it is apparent that on the last date notified for scrutiny of nomination, petitioner's nomination paper presented on 2nd January 2006 was valid and should have been accepted. Additionally, he relies upon bye-laws and states that petitioner is not a defaulter at all. He places reliance upon a Division Bench bench of this Court reported in 1978 M.L.J. 474 and a latest decision of this Court (A.B.Naik, J) at

Aurangabad Bench in the case of Nanath s/o.Motiram Shirale Vs. The Returning Officer (Assistant Registrar Coo.Societies, Patoda Dist.Beed), reported in 2005 (4) All M.R. 318. In support of his contention that a writ petition would lie and this court is empowered to issue directions to the Returning Officer to accept nomination papers even at this stage. Mr.Dalvi also relies upon a Supreme Court decision in the case of Pundlik Vs. State of Maharashtra & Ors., reported in 2000 (4) M.L.J. 254.

5. In my view, the factual dispute as to whether the petitioner was defaulter at the relevant date or not cannot be gone into by me in writ jurisdiction. More so, when it would have to be resolved after ascertaining that the certificate produced by respondent No.3 is genuine or there is any interpolation in the date. Similarly, as to whether petitioner had produced the certificates issued by the Karkhana

as also the receipt, although, it is dated 2nd January 2006, on the date of scrutiny is also debatable in the light of petitioner's own letter addressed to Returnable Officer and annexed as Exh.E. The said letter is dated 3rd January 2006. All such factual disputes would necessitate recording of evidence before contents thereof could be relied upon. It is not permissible to go into such aspects in the limited jurisdiction conferred on this Court under Article 227 of Constitution of India. Therefore, assuming that petition is maintainable, it is not possible to interfere with the decision of the appellate authority.

6. More so, when remedy of raising dispute under section 91 is also available to the petitioner. Needless to state that as and when such dispute is filed, the same will be decided upon materials produced and uninfluenced by the order passed by the appellate authority under

section 152-A or the present order. Petition dismissed.

(S.C.DHARMADHIKARI, J)